part, and for the third and fourth quarters in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0970–0079)

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PARTS 403–410

PART 411—STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND SEXUAL HARASSMENT INVOLVING UNACCOMPANIED CHILDREN

Sec.

Subpart L—Audits and Corrective Action

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§ 411.5 General definitions.

For the purposes of this part, the following definitions apply:

ACF means the Administration for Children and Families.

Care provider facility means any ORR funded program that is licensed, certified, or accredited by an appropriate State or local agency to provide residential or group services to UCs, including a program of group homes or facilities for children with special needs or staff-secure services for children. Emergency care provider facilities are included in this definition but may or may not be licensed, certified, or accredited by an appropriate State or local agency.

Contractor means a person who, or entity that, provides services on a recurring basis pursuant to a contractual agreement with ORR or with a care provider facility or has a sub-contractual agreement with the contractor.

DHS means the Department of Homeland Security.

Director means the Director of the Office of Refugee Resettlement.

DOJ means the Department of Justice.

Emergency means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

Emergency care provider facility is a type of care provider facility that is temporarily opened to provide temporary emergency shelter and services for UCs during an influx. Emergency care provider facilities may or may not be licensed by an appropriate State or local agency.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security of a care provider facility or a threat to the safety and security of any person.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex.

Gender identity refers to one's sense of oneself as male, female, or transgender.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

HHS means the Department of Health and Human Services.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Law enforcement means any local, State, or Federal enforcement agency with the authority and jurisdiction to investigate whether any criminal laws were violated.

LGBTQI means lesbian, gay, bisexual, transgender, questioning, or intersex.

Limited English proficient (LEP) means individuals for whom English is not the primary language and who may have a limited ability to read, write, speak, or understand English.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified medical practitioner'' refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified mental health practitioner'' refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

ORR refers to the Office of Refugee Resettlement.

Pat-down search means a sliding or patting of the hands over the clothed body of an unaccompanied child by

staff to determine whether the individual possesses contraband.

Secure care provider facility is a type of care provider facility with a physically secure structure and staff responsible for controlling violent behavior. ORR uses a secure care provider facility as the most restrictive placement option for a UC who poses a danger to him or herself or others or has been charged with having committed a criminal offense. A secure care provider facility is a juvenile detention center.

Sex refers to a person's biological status and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

Sexual Assault Forensic Examiner (SAFE) means a ''medical practitioner'' who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

Sexual Assault Nurse Examiner (SANE) means a registered nurse who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

Special needs means mental and/or physical conditions that require special services and treatment by staff. A UC may have special needs due to a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102(2).

Staff means employees or contractors of ORR or a care provider facility, including any entity that operates within a care provider facility.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Traditional foster care means a type of care provider facility where a UC is placed with a family in a community-based setting. The State or locally licensed foster family is responsible for providing basic needs in addition to responsibilities as outlined by the State or local licensed child placement agency, State and local licensing regulations, and any ORR policies related to foster care. The UC attends public school and receives on-going case management and counseling services. The care provider facility facilitates the provision of additional psychiatric, psychological, or counseling referrals as needed. Traditional foster care may include transitional or short-term foster care as well as long-term foster care providers.

Transgender means a person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person's assigned sex at birth.

Unaccompanied child (UC) means a child:

(1) Who has no lawful immigration status in the United States;

(2) Who has not attained 18 years of age; and

(3) With respect to whom there is no parent or legal guardian in the United States or there is no parent or legal guardian in the United States available to provide care and physical custody.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of ORR or the care provider facility.

Youth care worker means employees primarily responsible for the supervision and monitoring of UCs in housing units, educational areas, recreational areas, dining areas, and other program areas of a care provider facility.

§411.6 Definitions related to sexual abuse and sexual harassment.

For the purposes of this part, the following definitions apply:

Sexual abuse means—

(1) Sexual abuse of a UC by another UC; and

(2) Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer.

Sexual abuse of a UC by another UC includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer includes any of the following acts, with or without the consent of the UC:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, grantee, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;

(7) Any display by a staff member, grantee, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a UC; and

(8) Voyeurism by a staff member, grantee, contactor, or volunteer.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, other electronic communication, or actions of a derogatory or offensive sexual nature by one UC towards another; and

(2) Repeated verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, or other electronic communication of a sexual nature to a UC by a staff member, grantee, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a staff member, grantee, contractor, or volunteer means an invasion of privacy of a UC by a staff member, grantee, contractor, or volunteer for reasons unrelated to official duties, such as inappropriately viewing a UC perform bodily functions or bathing; requiring a UC to expose his or her buttocks, genitals, or breasts; or recording images of all or part of a UC's naked body or of a UC performing bodily functions.

Subpart A—Coverage

§ 411.10 Coverage of ORR care provider facilities.

(a) This part applies to all ORR care provider facilities except secure care provider facilities and traditional foster care homes. Secure care provider facilities must, instead, follow the Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR part 115. Traditional foster care homes are not subject to this part.

(b) Emergency care provider facilities are subject to every section in this part except:

(1) Section 411.22(c);

(2) Section 411.71(b)(4);

(3) Section 411.101(b);

(4) Section 411.102(c), (d), and (e); and

(5) Subpart L.

(c) Emergency care provider facilities must implement the standards in this

rule, excluding the standards listed above, within fifteen (15) days of opening. The Director, however, may, using unreviewable discretion, waive or modify specific sections for a particular emergency care provider facility for good cause. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.

(d) For the purposes of this part, the terms related to sexual abuse and sexual harassment refer specifically to the sexual abuse or sexual harassment of a UC that occurs at an ORR care provider facility while in ORR care and custody. Incidents of past sexual abuse or sexual harassment or sexual abuse or sexual harassment that occurs in any other context other than in ORR care and custody are not within the scope of this regulation.

Subpart B—Prevention Planning

§411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

(a) ORR must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining ORR's approach to preventing, detecting, and responding to such conduct. ORR must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population.

(b) ORR must employ or designate an upper-level, ORR-wide Prevention of Sexual Abuse Coordinator (PSA Coordinator) with sufficient time and authority to develop, implement, and oversee ORR efforts to comply with these standards in all of its care provider facilities.

(c) Care provider facilities must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility's approach to preventing, detecting, and responding to such conduct. The care provider facility also must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population. ORR will review and approve each care provider facility's written policy.

(d) Care provider facilities must employ or designate a Prevention of Sexual Abuse Compliance Manager (PSA Compliance Manager) with sufficient time and authority to develop, implement, and oversee the care provider facility's efforts to comply with the provisions set forth in this part and serve as a point of contact for ORR's PSA Coordinator.

§411.12 Contracting with or having a grant from ORR for the care of UCs.

(a) When contracting with or providing a grant to a care provider facility, ORR must include in any new contracts, contract renewals, cooperative agreements, or cooperative agreement renewals the entity's obligation to adopt and comply with these standards.

(b) For organizations that contract, grant, or have a sub-grant with a care provider facility to provide residential services to UCs, the organization must, as part of the contract or cooperative agreement, adopt and comply with the provisions set forth in this part.

(c) All new contracts, contract renewals, and grants must include provisions for monitoring and evaluation to ensure that the contractor, grantee, or sub-grantee is complying with these provisions.

§411.13 UC supervision and monitoring.

(a) Care provider facilities must develop, document, and make their best effort to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable under State and local licensing standards, video monitoring, to protect UCs from sexual abuse and sexual harassment.

(b) In determining adequate levels of UC supervision and determining the need for video monitoring, the care provider facility must take into consideration the physical layout of the

facility, the composition of the UC population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment, and any other relevant factors. Video monitoring equipment may not be placed in any bathroom, shower or bathing area, or other area where UCs routinely undress.

(c) Care provider facilities must conduct frequent unannounced rounds to identify and deter sexual abuse and sexual harassment. Such rounds must be implemented during night as well as day shifts. Care provider facilities must prohibit staff from alerting others that rounds are occurring, unless such announcement is related to the legitimate operational functions of the care provider facility.

§ 411.14 Limits to cross-gender viewing and searches.

(a) Cross-gender pat-down searches of UCs must not be conducted except in exigent circumstances. For a UC that identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search.

(b) All pat-down searches must be conducted in the presence of one additional care provider facility staff member unless there are exigent circumstances and must be documented and reported to ORR.

(c) Strip searches and visual body cavity searches of UCs are prohibited.

(d) Care provider facilities must permit UCs to shower, perform bodily functions, and change clothing without being viewed by staff, except: In exigent circumstances; when such viewing is incidental to routine room checks; is otherwise appropriate in connection with a medical examination or monitored bowel movement; if a UC is under age 6 and needs assistance with such activities; a UC with special needs is in need of assistance with such activities; or the UC requests and requires assistance. If the UC has special needs and requires assistance with such activities, the care provider facility staff member must be of the same gender as the UC when assisting with such activities.

(e) Care provider facilities must not search or physically examine a UC for the sole purpose of determining the UC's sex. If the UC's sex is unknown, it may be determined during conversations with the UC, by reviewing medical records, or, if necessary, learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) Care provider facilities must train youth care worker staff in proper procedures for conducting pat-down searches, including cross-gender pat-down searches and searches of transgender and intersex UCs. All pat-down searches must be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and existing ORR policy, including consideration of youth care worker staff safety.

§ 411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

(a) Care provider facilities must take appropriate steps to ensure that UCs with disabilities (including, for example, UCs who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps must include, when necessary to ensure effective communication with UCs who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the care provider facility must ensure that any written materials related to sexual abuse and sexual harassment are translated and provided in formats or through methods that ensure effective communication with UCs with disabilities, including UCs who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

(b) Care provider facilities must take appropriate steps to ensure that UCs

who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse or sexual harassment, the care provider facility must provide quality in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation by someone other than another UC. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment, including notification, orientation, and instruction not provided by ORR, are translated either verbally or in written form into the preferred languages of UCs.

§411.16 Hiring and promotion decisions.

(a) Care provider facilities are prohibited from hiring or promoting any individual who may have contact with UCs and must not enlist the services of any contractor or volunteer who may have contact with UCs and who engaged in: Sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution (as defined in 42 U.S.C. 1997), or care provider facility; who was convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who was civilly or administratively adjudicated to have engaged in such activity.

(b) Care provider facilities considering hiring or promoting staff must ask all applicants who may have direct contact with UCs about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of performance evaluations of current employees. Care provider facilities also must impose upon employees a continuing affirmative duty to disclose any such misconduct, whether the conduct occurs on or off duty. Care provider facilities, consistent with law, must make their best efforts to contact all prior institutional employers of an applicant for employment to obtain information on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of alleged sexual abuse or sexual harassment.

(c) Prior to hiring new staff who may have contact with UCs, the care provider facility must conduct a background investigation to determine whether the candidate for hire is suitable for employment with minors in a residential setting. Upon ORR request, the care provider facility must submit all background investigation documentation for each staff member and the care provider facility's conclusions.

(d) Care provider facilities also must perform a background investigation before enlisting the services of any contractor or volunteer who may have contact with UCs. Upon ORR request, the care provider facility must submit all background investigation documentation for each contractor or volunteer and the care provider facility's conclusions.

(e) Care provider facilities must either conduct a criminal background records check at least every five years for current employees, contractors, and volunteers who may have contact with UCs or have in place a system for capturing the information contained in a criminal background records check for current employees.

(f) Material omissions regarding such misconduct or the provision of materially false information by the applicant or staff will be grounds for termination or withdrawal of an offer of employment, as appropriate.

(g) Unless prohibited by law, the care provider facility must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer

for whom such employee has applied to work.

(h) In the event the care provider facility contracts with an organization to provide residential services and/or other services to UCs, the requirements of this section also apply to the organization and its staff.

§ 411.17 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the care provider facility, as appropriate, must consider the effect of the design, acquisition, expansion, or modification upon their ability to protect UCs from sexual abuse and sexual harassment.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a care provider facility, the care provider facility, as appropriate, must consider how such technology may enhance its ability to protect UCs from sexual abuse and sexual harassment while maintaining UC privacy and dignity.

Subpart C—Responsive Planning

§ 411.21 Victim advocacy, access to counselors, and forensic medical examinations.

(a) Care provider facilities must develop procedures to best utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs. Each care provider facility must establish procedures to make available outside victim services following incidents of sexual abuse and sexual harassment; the care provider facility must attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available or if the UC prefers, the care provider facility may provide a licensed clinician on staff to provide crisis intervention and trauma services for the UC. The outside or internal victim advocate must provide emotional support, crisis intervention, information, and referrals.

(b) Where evidentiarily or medically appropriate, and only with the UC's consent, the care provider facility must arrange for an alleged victim UC to undergo a forensic medical examination as soon as possible and that is performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination may be performed by a qualified medical practitioner.

(c) As requested by a victim, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered at a hospital conducting a forensic examination, must be allowed to the extent possible for support during a forensic examination and investigatory interviews.

(d) To the extent possible, care provider facilities must request that the investigating agency follow the requirements of paragraphs (a) through (c) of this section.

§ 411.22 Policies to ensure investigation of allegations and appropriate agency oversight.

(a) ORR and care provider facilities must ensure that each allegation of sexual abuse and sexual harassment, including a third-party or anonymous allegation, is immediately referred to all appropriate investigating authorities, including Child Protective Services, the State or local licensing agency, and law enforcement. Care provider facilities also must immediately report each allegation of sexual abuse and sexual harassment to ORR according to ORR policies and procedures. The care provider facility has an affirmative duty to keep abreast of the investigation(s) and cooperate with outside investigators. ORR also must remain informed of ongoing investigations and fully cooperate as necessary.

(b) Care provider facilities must maintain or attempt to enter into a written memorandum of understanding or other agreement specific to investigations of sexual abuse and sexual harassment with the law enforcement agency, designated State or local Child Protective Services, and/or the State or local licensing agencies responsible

for conducting sexual abuse and sexual harassment investigations, as appropriate. Care provider facilities must maintain a copy of the agreement or documentation showing attempts to enter into an agreement.

(c) Care provider facilities must maintain documentation for at least ten years of all reports and referrals of allegations of sexual abuse and sexual harassment.

(d) ORR will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.

(e) All allegations of sexual abuse that occur at emergency care provider facilities operating on fully Federal properties must be reported to the Department of Justice in accordance with ORR policies and procedures and any memoranda of understanding.

Subpart D—Training and Education

§ 411.31 Care provider facility staff training.

(a) Care provider facilities must train or require the training of all employees who may have contact with UCs to be able to fulfill their responsibilities under these standards, including training on:

(1) ORR and the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment;

(2) The right of UCs and staff to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse and sexual harassment;

(3) Definitions and examples of prohibited and illegal sexual behavior;

(4) Recognition of situations where sexual abuse or sexual harassment may occur;

(5) Recognition of physical, behavioral, and emotional signs of sexual abuse and methods of preventing and responding to such occurrences;

(6) How to avoid inappropriate relationships with UCs;

(7) How to communicate effectively and professionally with UCs, including UCs who are lesbian, gay, bisexual, transgender, questioning, or intersex;

(8) Procedures for reporting knowledge or suspicion of sexual abuse and sexual harassment as well as how to comply with relevant laws related to mandatory reporting;

(9) The requirement to limit reporting of sexual abuse and sexual harassment to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement, investigative, or prosecutorial purposes;

(10) Cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior and appropriate terms and concepts to use when discussing sex, sexual abuse, and sexual harassment with a culturally diverse population;

(11) Sensitivity and awareness regarding past trauma that may have been experienced by UCs;

(12) Knowledge of all existing resources for UCs both inside and outside the care provider facility that provide treatment and counseling for trauma and legal advocacy for victims; and

(13) General cultural competency and sensitivity to the culture and age of UC.

(b) All current care provider facility staff and employees who may have contact with UCs must be trained within six months of the effective date of these standards, and care provider facilities must provide refresher information, as appropriate.

(c) Care provider facilities must document that staff and employees who may have contact with UCs have completed the training.

§ 411.32 Volunteer and contractor training.

(a) Care provider facilities must ensure that all volunteers and contractors who may have contact with UCs are trained on their responsibilities under ORR and the care provider facility's sexual abuse and sexual harassment prevention, detection, and response policies and procedures as well as any relevant Federal, State, and local laws.

(b) The level and type of training provided to volunteers and contractors

may be based on the services they provide and the level of contact they will have with UCs, but all volunteers and contractors who have contact with UCs must be trained on the care provider facility's zero tolerance policies and procedures regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) Each care provider facility must maintain written documentation that contractors and volunteers who may have contact with UCs have completed the required trainings.

§ 411.33 UC education.

(a) During the intake process and periodically thereafter, each care provider facility must ensure that during orientation or a periodic refresher session, UCs are notified and informed of the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment in an age and culturally appropriate fashion and in accordance with §411.15 that includes, at a minimum:

(1) An explanation of the UC's right to be free from sexual abuse and sexual harassment as well as the UC's right to be free from retaliation for reporting such incidents;

(2) Definitions and examples of UC-on-UC sexual abuse, staff-on-UC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment;

(3) An explanation of the methods for reporting sexual abuse and sexual harassment, including to any staff member, outside entity, and to ORR;

(4) An explanation of a UC's right to receive treatment and counseling if the UC was subjected to sexual abuse or sexual harassment;

(b) Care provider facilities must provide the UC notification, orientation, and instruction in formats accessible to all UCs at a time and in a manner that is separate from information provided about their immigration cases.

(c) Care provider facilities must document all UC participation in orientation and periodic refresher sessions that address the care provider facility's zero tolerance policies.

(d) Care provider facilities must post on all housing unit bulletin boards who a UC can contact if he or she is a victim or is believed to be at imminent risk of sexual abuse or sexual harassment in accordance with §411.15.

(e) Care provider facilities must make available and distribute a pamphlet in accordance with §411.15 that contains, at a minimum, the following:

(1) Notice of the care provider facility's zero-tolerance policy toward sexual abuse and sexual harassment;

(2) The care provider facility's policies and procedures related to sexual abuse and sexual harassment;

(3) Information on how to report an incident of sexual abuse or sexual harassment;

(4) The UC's rights and responsibilities related to sexual abuse and sexual harassment;

(5) How to contact organizations in the community that provide sexual abuse counseling and legal advocacy for UC victims of sexual abuse and sexual harassment;

(6) How to contact diplomatic or consular personnel.

§ 411.34 Specialized training: Medical and mental health care staff.

(a) All medical and mental health care staff employed or contracted by care provider facilities must be specially trained, at a minimum, on the following:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to respond effectively and professionally to victims of sexual abuse and sexual harassment;

(3) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment; and

(4) How to preserve physical evidence of sexual abuse. If medical staff conduct forensic examinations, such medical staff must receive training to conduct such examinations.

(b) Care provider facilities must document that medical and mental health practitioners employed or contracted by the care provider facility received the training referenced in this section.

(c) Medical and mental health practitioners employed or contracted by the care provider facility also must receive the training mandated for employees under §411.31 or for contractors and volunteers under §411.32, depending on

the practitioner's status at the care provider facility.

Subpart E—Assessment for Risk of Sexual Victimization and Abusiveness

§ 411.41 Assessment for risk of sexual victimization and abusiveness.

(a) Within 72 hours of a UC's arrival at a care provider facility and periodically throughout a UC's stay, the care provider facility must obtain and use information about each UC's personal history and behavior using a standardized screening instrument to reduce the risk of sexual abuse or sexual harassment by or upon a UC.

(b) The care provider facility must consider, at a minimum and to the extent that the information is available, the following criteria to assess UCs for risk of sexual victimization:

(1) Prior sexual victimization or abusiveness;

(2) Any gender nonconforming appearance or manner or Self-identification as lesbian, gay, bisexual, transgender, questioning, or intersex and whether the resident may therefore be vulnerable to sexual abuse or sexual harassment;

(3) Any current charges and offense history;

(4) Age;

(5) Any mental, physical, or developmental disability or illness;

(6) Level of emotional and cognitive development;

(7) Physical size and stature;

(8) The UC's own perception of vulnerability; and

(9) Any other specific information about an individual UC that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other UCs.

(c) This information must be ascertained through conversations with the UC during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, care provider facility behavioral records, and other relevant documentation from the UC's files. Only trained staff are permitted to talk with UCs to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes of the assessment required under paragraph (a) of this section. Care provider facilities must provide UCs an opportunity to discuss any safety concerns or sensitive issues privately.

(d) The care provider facility must implement appropriate controls on the dissemination within the care provider facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the UC's detriment by staff or other UCs.

§ 411.42 Use of assessment information.

(a) The care provider facility must use the information from the risk assessment under § 411.41 to inform assignment of UCs to housing, education, recreation, and other activities and services. The care provider facility must make individualized determinations about how to ensure the safety and health of each UC.

(b) Care provider facilities may not place UCs on one-on-one supervision as a result of the assessment completed in § 411.41 unless there are exigent circumstances that require one-on-one supervision to keep the UC, other UCs, or staff safe, and then, only until an alternative means of keeping all residents and staff safe can be arranged. During any period of one-on-one supervision, a UC may not be denied any required services, including but not limited to daily large-muscle exercise, required educational programming, and social services, as reasonable under the circumstances. UCs on one-on-one supervision must receive daily visits from a medical practitioner or mental health care clinician as necessary unless the medical practitioner or mental health care clinician determines daily visits are not required. The medical practitioner or mental health care clinician, however, must continue to meet with the UC on a regular basis while the UC is on one-on-one supervision.

(c) When making assessment and housing assignments for a transgender or intersex UCs, the care provider facility must consider the UC's gender self-

identification and an assessment of the effects of a housing assignment on the UC's health and safety. The care provider facility must consult a medical or mental health professional as soon as practicable on this assessment. The care provider facility must not base housing assignment decisions of transgender or intersex UCs solely on the identity documents or physical anatomy of the UC; a UC's self-identification of his/her gender and self-assessment of safety needs must always be taken into consideration as well. An identity document may include but is not limited to official U.S. and foreign government documentation, birth certificates, and other official documentation stating the UC's sex. The care provider facility's housing assignment of a transgender or intersex UCs must be consistent with the safety and security considerations of the care provider facility, State and local licensing standards, and housing and programming assignments of each transgender or intersex UCs must be regularly reassessed to review any threats to safety experienced by the UC.

Subpart F—Reporting

§ 411.51 UC reporting.

(a) The care provider facility must develop policies and procedures in accordance with § 411.15 to ensure that UCs have multiple ways to report to the care provider: Sexual abuse and sexual harassment, retaliation for reporting sexual abuse or sexual harassment, and staff neglect or violations of responsibilities that may have contributed to such incidents. The care provider facility also must provide access to and instructions on how UCs may contact their consular official, ORR's headquarters, and an outside entity to report these incidents. Care provider facilities must provide UCs access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under § 411.51(b).

(b) The care provider facility must provide and inform the UC of at least one way for UCs to report sexual abuse and sexual harassment to an entity or office that is not part of the care provider facility and is able to receive and immediately forward UC reports of sexual abuse and sexual harassment to ORR officials, allowing UCs to remain anonymous upon request. The care provider facility must maintain or attempt to enter into a memorandum of understanding or other agreement with the entity or office and maintain copies of agreements or documentation showing attempts to enter into agreements.

(c) The care provider facility's policies and procedures must include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties. Staff must promptly document any verbal reports.

(d) All allegations or knowledge of sexual abuse and sexual harassment by staff or UCs must be immediately reported to the State or local licensing agency, the State or local Child Protective Services agency, State or local law enforcement, and to ORR according to ORR's policies and procedures.

§ 411.52 Grievances.

(a) The care provider facility must implement written policies and procedures for identifying and handling time-sensitive grievances that involve an immediate threat to UC health, safety, or welfare related to sexual abuse and sexual harassment. All such grievances must be reported to ORR according to ORR policies and procedures.

(b) The care provider facility's staff must bring medical emergencies to the immediate attention of proper medical and/or emergency services personnel for further assessment.

(c) The care provider facility must issue a written decision on the grievance within five days of receipt.

(d) To prepare a grievance, a UC may obtain assistance from another UC, care provider facility staff, family members, or legal representatives. Care provider facility staff must take reasonable steps to expedite requests for assistance from these other parties.

§ 411.53 UC access to outside confidential support services.

(a) Care provider facilities must utilize available community resources and services to provide valuable expertise

and support in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators to most appropriately address a sexual abuse victim's needs. The care provider facility must maintain or attempt to enter into memoranda of understanding or other agreements with community service providers, or if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The care provider facility must maintain copies of its agreements or documentation showing attempts to enter into such agreements.

(b) Care provider facilities must have written policies and procedures to include outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols, if such resources are available.

(c) Care provider facilities must make available to UC information about local organizations that can assist UCs who are victims of sexual abuse and sexual harassment, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the care provider facility must make available the same information about national organizations. The care provider facility must enable reasonable communication between UCs and these organizations and agencies in a confidential manner and inform UCs, prior to giving them access, of the extent to which such communications will be confidential.

§ 411.54 Third-party reporting.

ORR must establish a method to receive third-party reports of sexual abuse and sexual harassment and must make available to the public information on how to report sexual abuse and sexual harassment on behalf of a UC.

§ 411.55 UC access to attorneys or other legal representatives and families.

(a) Care provider facilities must provide UCs confidential access to their attorney or other legal representative in accordance with the care provider's attorney-client visitation rules. The care provider's visitation rules must include provisions for immediate access in the case of an emergency or exigent circumstance. The care provider's attorney-client visitation rules must be approved by ORR to ensure the rules are reasonable and appropriate and include provisions for emergencies and exigent circumstances.

(b) Care provider facilities must provide UCs access to their families, including legal guardians, unless ORR has documentation showing that certain family members or legal guardians should not be provided access because of safety concerns.

Subpart G—Official Response Following a UC Report

§ 411.61 Staff reporting duties.

(a) All care provider facility staff, volunteers, and contractors must immediately report to ORR according to ORR policies and procedures and to State or local agencies in accordance with mandatory reporting laws: any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred while a UC was in ORR care; retaliation against UCs or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. ORR must review and approve the care provider facility's policies and procedures and ensure that the care provider facility specifies appropriate reporting procedures.

(b) Care provider facility staff members who become aware of alleged sexual abuse or sexual harassment must immediately follow reporting requirements set forth by ORR's and the care provider facility's policies and procedures.

(c) Apart from such reporting, care provider facility staff must not reveal any information related to a sexual abuse or sexual harassment report to anyone within the care provider facility except to the extent necessary for medical or mental health treatment, investigations, notice to law enforcement, or other security and management decisions.

(d) Care provider facility staff must report any sexual abuse and sexual harassment allegations to the designated State or local services agency under applicable mandatory reporting laws in addition to law enforcement and the State and local licensing agency.

(e) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, the care provider facility head or his or her designee must report the allegation to the alleged victim's parents or legal guardians, unless ORR has evidence showing the parents or legal guardians should not be notified or the victim does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

(f) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, ORR will share this information with the UC's attorney of record within 48 hours of learning of the allegation unless the UC does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

§ 411.62 Protection duties.

If a care provider facility employee, volunteer, or contractor reasonably believes that a UC is subject to substantial risk of imminent sexual abuse or sexual harassment, he or she must take immediate action to protect the UC.

§ 411.63 Reporting to other care provider facilities and DHS.

(a) Upon receiving an allegation that a UC was sexually abused or sexually harassed while at another care provider facility, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving the allegation. ORR will then notify the care provider facility where the alleged abuse or harassment occurred.

(b) The care provider facility must document that it provided such notification to ORR.

(c) The care provider facility that receives such notification, to the extent that such care provider facility is covered by this part, must ensure that the allegation is referred for investigation in accordance with these standards.

(d) Upon receiving an allegation that a UC was sexually abused or sexually harassed while in DHS custody, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving an allegation. ORR will then report the allegation to DHS in accordance with DHS policies and procedures.

(e) The care provider facility must document that it provided such notification to ORR.

§ 411.64 Responder duties.

(a) Upon learning of an allegation that a UC was sexually abused while in an ORR care provider facility, the first care provider facility staff member to respond to the report must be required to:

(1) Separate the alleged victim, abuser, and any witnesses;

(2) Preserve and protect, to the greatest extent possible, any crime scene until the appropriate authorities can take steps to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brush teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser(s) and/or witnesses, as necessary, do not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) [Reserved]

§ 411.65 Coordinated response.

(a) Care provider facilities must develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, outside investigators,

victim advocates, and care provider facility leadership in response to an incident of sexual abuse to ensure that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence. ORR must approve the written institutional plan.

(b) Care provider facilities must use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(c) If a victim of sexual abuse is transferred between ORR care provider facilities, ORR must, as permitted by law, inform the receiving care provider facility of the incident and the victim's potential need for medical or social services.

(d) If a victim of sexual abuse is transferred from an ORR care provider facility to a non-ORR facility or sponsor, ORR must, as permitted by law, inform the receiving facility or sponsor of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

§ 411.66 Protection of UCs from contact with alleged abusers.

ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment must be suspended from all duties that would involve or allow access to UCs pending the outcome of an investigation.

§ 411.67 Protection against retaliation.

Care provider facility staff, contractors, volunteers, and UCs must not retaliate against any person who reports, complains about, or participates in an investigation of alleged sexual abuse or sexual harassment. For the remainder of the UC's stay in ORR custody following a report of sexual abuse or sexual harassment, ORR and the care provider facility must monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff and must promptly remedy any such retaliation. ORR and the care provider facility must also monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff against any staff member, contractor, or volunteer and must promptly remedy any such retaliation. Items ORR and the care provider facility should monitor include but are not limited to any UC disciplinary reports, housing or program changes, negative performance reviews, or reassignments of staff. Care provider facilities must discuss any changes with the appropriate UC or staff member as part of their efforts to determine if retaliation is taking place and, when confirmed, immediately takes steps to protect the UC or staff member.

§ 411.68 Post-allegation protection.

(a) Care provider facilities must ensure that UC victims of sexual abuse and sexual harassment are assigned to a supportive environment that represents the least restrictive housing option possible to keep the UC safe and secure, subject to the requirements of § 411.42.

(b) The care provider facility should employ multiple protection measures to ensure the safety and security of UC victims of sexual abuse and sexual harassment, including but not limited to: Housing changes or transfers for UC victims and/or abusers or harassers; removal of alleged UC abusers or harassers from contact with victims; and emotional support services for UCs or staff who fear retaliation for reporting sexual abuse or sexual harassment or cooperating with investigations.

(c) A UC victim may be placed on one-on-one supervision in order to protect the UC in exigent circumstances. Before taking the UC off of one-on-one supervision, the care provider facility must complete a re-assessment taking into consideration any increased vulnerability of the UC as a result of the sexual abuse or sexual harassment. The re-assessment must be completed as soon as possible and without delay so that the UC is not on one-on-one supervision longer than is absolutely necessary for safety and security reasons.

Subpart H—ORR Incident Monitoring and Evaluation

§ 411.71 ORR monitoring and evaluation of care provider facilities following an allegation of sexual abuse or sexual harassment.

(a) Upon receiving an allegation of sexual abuse or sexual harassment that occurs at an ORR care provider facility, ORR will monitor and evaluate the care provider facility to ensure that the care provider facility complied with the requirements of this section or ORR policies and procedures. Upon conclusion of an outside investigation, ORR must review any available completed investigation reports to determine whether additional monitoring and evaluation activities are required.

(b) ORR must develop written policies and procedures for incident monitoring and evaluation of sexual abuse and sexual harassment allegations, including provision requiring:

(1) Reviewing prior complaints and reports of sexual abuse and sexual harassment involving the suspected perpetrator;

(2) Determining whether actions or failures to act at the care provider facility contributed to the abuse or harassment;

(3) Determining if any ORR policies and procedures or relevant legal authorities were broken; and

(4) Retention of such reports for as long as the alleged abuser or harasser is in ORR custody or employed by ORR or the care provider facility, plus ten years.

(c) ORR must ensure that its incident monitoring and evaluation does not interfere with any ongoing investigation conducted by State or local Child Protective Services, the State or local licensing agency, or law enforcement.

(d) When outside agencies investigate an allegation of sexual abuse or sexual harassment, the care provider facility and ORR must cooperate with outside investigators.

§ 411.72 Reporting to UCs.

Following an investigation by the appropriate investigating authority into a UC's allegation of sexual abuse or sexual harassment, ORR must notify the UC in his/her preferred language of the result of the investigation if the UC is still in ORR care and custody and where feasible. If a UC has been released from ORR care when an investigation is completed, ORR should attempt to notify the UC. ORR may encourage the investigating agency to also notify other complainants or additional parties notified of the allegation of the result of the investigation.

Subpart I—Interventions and Discipline

§ 411.81 Disciplinary sanctions for staff.

(a) Care provider facilities must take disciplinary action up to and including termination against care provider facility staff with a substantiated allegation of sexual abuse or sexual harassment against them or for violating ORR or the care provider facility's sexual abuse and sexual harassment policies and procedures.

(b) Termination must be the presumptive disciplinary sanction for staff who engaged in sexual abuse or sexual harassment.

(c) All terminations for violations of ORR and/or care provider facility sexual abuse and sexual harassment policies and procedures or resignations by staff, who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies.

(d) Any staff member with a substantiated allegation of sexual abuse or sexual harassment against him/her at an ORR care provider facility is barred from employment at any ORR care provider facility.

§ 411.82 Corrective actions for contractors and volunteers.

(a) Any contractor or volunteer with a substantiated allegation of sexual abuse or sexual harassment against him/her must be prohibited from working or volunteering at the care provider facility and at any ORR care provider facility.

(b) The care provider facility must take appropriate remedial measures and must consider whether to prohibit

further contact with UCs by contractors or volunteers who have not engaged in sexual abuse or sexual harassment but violated other provisions within these standards, ORR sexual abuse and sexual harassment policies and procedures, or the care provider's sexual abuse and sexual harassment policies and procedures.

§ 411.83 Interventions for UCs who engage in sexual abuse.

UCs must receive appropriate interventions if they engage in UC-on-UC sexual abuse. Decisions regarding which types of interventions to use in particular cases, including treatment, counseling, or educational programs, are made with the goal of promoting improved behavior by the UC and ensuring the safety of other UCs and staff. Intervention decisions should take into account the social, sexual, emotional, and cognitive development of the UC and the UC's mental health status. Incidents of UC-on-UC abuse are referred to all investigating authorities, including law enforcement entities.

Subpart J—Medical and Mental Health Care

§ 411.91 Medical and mental health assessments; history of sexual abuse.

(a) If the assessment pursuant to § 411.41 indicates that a UC experienced prior sexual victimization or perpetrated sexual abuse, the care provider facility must ensure that the UC is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Care provider facility staff must also ensure that all UCs disclosures are reported in accordance with these standards.

(b) When a referral for medical follow-up is initiated, the care provider facility must ensure that the UC receives a health evaluation no later than seventy-two (72) hours after the referral.

(c) When a referral for mental health follow-up is initiated, the care provider facility must ensure that the UC receives a mental health evaluation no later than seventy-two (72) hours after the referral.

§ 411.92 Access to emergency medical and mental health services.

(a) Care provider facilities must provide UC victims of sexual abuse timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where appropriate under medical or mental health professional standards.

(b) Care provider facilities must provide UC victims of sexual abuse access to all medical treatment and crisis intervention services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 411.93 Ongoing medical and mental health care for sexual abuse and sexual harassment victims and abusers.

(a) Care provider facilities must offer ongoing medical and mental health evaluations and treatment to all UCs who are victimized by sexual abuse or sexual harassment while in ORR care and custody.

(b) The evaluation and treatment of such victims must include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in other care provider facilities or their release from ORR care and custody.

(c) The care provider facility must provide victims with medical and mental health services consistent with the community level of care.

(d) Care provider facilities must ensure that female UC victims of sexual abuse by a male abuser while in ORR care and custody are offered pregnancy tests, as necessary. If pregnancy results from an instance of sexual abuse, care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services. In order for UCs to make informed decisions regarding medical services, including, as appropriate, medical services provided under § 411.92, care provider facilities should engage the UC in

discussions with family members or attorneys of record in accordance with § 411.55 to the extent practicable and follow appropriate State laws regarding the age of consent for medical procedures.

(e) Care provider facilities must ensure that UC victims of sexual abuse that occurred while in ORR care and custody are offered tests for sexually transmitted infections as medically appropriate.

(f) Care provider facilities must ensure that UC victims are provided access to treatment services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(g) The care provider facility must attempt to conduct a mental health evaluation of all known UC-on-UC abusers within seventy-two (72) hours of learning of such abuse and/or abuse history and offer treatment when deemed appropriate by mental health practitioners.

Subpart K—Data Collection and Review

§ 411.101 Sexual abuse and sexual harassment incident reviews.

(a) Care provider facilities must conduct sexual abuse or sexual harassment incident reviews at the conclusion of every investigation of sexual abuse or sexual harassment and, where the allegation was either substantiated or unable to be substantiated but not determined to be unfounded, prepare a written report recommending whether the incident review and/or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and sexual harassment. The care provider facility must implement the recommendations for improvement or must document its reason for not doing so in a written response. Both the report and response must be forwarded to ORR's Prevention of Sexual Abuse Coordinator. Care provider facilities also must collect accurate, uniform data for every reported incident of sexual abuse and sexual harassment using a standardized instrument and set of definitions.

(b) Care provider facilities must conduct an annual review of all sexual abuse and sexual harassment investigations and resulting incident reviews to assess and improve sexual abuse and sexual harassment detection, prevention, and response efforts. The results and findings of the annual review must be provided to ORR's Prevention of Sexual Abuse Coordinator.

§ 411.102 Data collection.

(a) Care provider facilities must maintain all case records associated with claims of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling in accordance with these standards and applicable Federal and State laws and ORR policies and procedures.

(b) On an ongoing basis, the PSA Compliance Manager must work with care provider facility management and ORR to share data regarding effective care provider facility response methods to sexual abuse and sexual harassment.

(c) On a quarterly basis, the PSA Compliance Manager must prepare a report for ORR compiling information received about all incidents and allegations of sexual abuse and sexual harassment of UCs in the care provider facility during the period covered by the report as well as ongoing investigations and other pending cases.

(d) On an annual basis, the PSA Compliance Manager must aggregate incident-based sexual abuse and sexual harassment data, including the number of reported sexual abuse and sexual harassment allegations determined to be substantiated, unsubstantiated, unfounded, or for which an investigation is ongoing. For each incident, information concerning the following also must be included:

(1) The date, time, location, and nature of the incident;

(2) The demographic background of the victim and perpetrator (including citizenship, nationality, age, and sex) that excludes specific identifying information;

(3) The reporting timeline for the incident (including the name of the individual who reported the incident; the date and time the report was received

by the care provider facility; and the date and time the incident was reported to ORR);

(4) Any injuries sustained by the victim;

(5) Post-report follow-up responses and action taken by the care provider facility (*e.g.*, housing placement changes, medical examinations, mental health counseling);

(6) Any interventions imposed on the perpetrator.

(e) Care provider facilities must provide all data described in this section from the previous calendar year to ORR no later than August 31.

§411.103 Data review for corrective action.

(a) ORR must review data collected and aggregated pursuant to §§411.101 and 411.102 in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, procedures, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective actions on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each care provider facility as well as ORR as a whole.

(b) Such report must include a comparison of the current year's data and corrective actions with those from prior years and must provide an assessment of ORR's progress in preventing, detecting, and responding to sexual abuse and sexual harassment.

(c) The Director of ORR must approve ORR's annual report on ORR's UC Program as a whole and make the report available to the public through its Web site or otherwise make the report readily available to the public.

(d) ORR may redact specific material from the reports when necessary for safety and security reasons but must indicate the nature of the material redacted.

§411.104 Data storage, publication, and destruction.

(a) ORR must ensure that data collected pursuant to §§411.101 and 411.102 is securely retained in accordance with Federal and State laws and ORR record retention policies and procedures.

(b) ORR must make all aggregated sexual abuse and sexual harassment data from ORR care provider facilities with which it provides a grant to or contracts with, excluding secure care providers and traditional foster care providers, available to the public at least annually on its Web site consistent with existing ORR information disclosure policies and procedures.

(c) Before making any aggregated sexual abuse and sexual harassment data publicly available, ORR must remove all personally identifiable information.

(d) ORR must maintain sexual abuse and sexual harassment data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires for the disposal of official information in less than 10 years.

Subpart L—Audits and Corrective Action

§411.111 Frequency and scope of audits.

(a) Within three years of February 22, 2016, each care provider facility that houses UCs will be audited at least once; and during each three-year period thereafter.

(b) ORR may expedite an audit if it believes that a particular care provider facility may be experiencing problems related to sexual abuse or sexual harassment.

(c) ORR must develop and issue an instrument that is coordinated with the HHS Office of the Inspector General that will provide guidance on the conduct and contents of the audit.

(d) The auditor must review all relevant ORR-wide policies, procedures, reports, internal and external audits, and licensing requirements for each care provider facility type.

(e) The audits must review, at a minimum, a sampling of relevant documents and other records and other information for the most recent one-year period.

(f) The auditor must have access to, and must observe, all areas of the audited care provider facilities.

(g) ORR and the care provider facility must provide the auditor with the

relevant documentation to complete a thorough audit of the care provider facility.

(h) The auditor must retain and preserve all documentation (including, *e.g.*, videotapes and interview notes) relied upon in making audit determinations. Such documentation must be provided to ORR upon request.

(i) The auditor must interview a representative sample of UCs and staff, and the care provider facility must make space available suitable for such interviews.

(j) The auditor must review a sampling of any available video footage and other electronically available data that may be relevant to the provisions being audited.

(k) The auditor must be permitted to conduct private interviews with UCs.

(l) UCs must be permitted to send confidential information or correspondence to the auditor.

(m) Auditors must attempt to solicit input from community-based or victim advocates who may have insight into relevant conditions in the care provider facility.

(n) All sensitive and confidential information provided to auditors will include appropriate designations and limitations on further dissemination. Auditors must follow appropriate procedures for handling and safeguarding such information.

(o) Care provider facilities bear the affirmative burden on demonstrating compliance with the standards to the auditor.

§ 411.112 Auditor qualifications.

(a) An audit must be conducted by an entity or individual with relevant auditing or evaluation experience and is external to ORR.

(b) All auditors must be certified by ORR, and ORR must develop and issue procedures regarding the certification process within six months of December 24, 2014, which must include training requirements.

(c) No audit may be conducted by an auditor who received financial compensation from the care provider, the care provider's agency, or ORR (except for compensation received for conducting other audits) within the three years prior to ORR's retention of the auditor.

(d) ORR, the care provider, or the care provider's agency must not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to ORR's retention of the auditor, with the exception of contracting for subsequent audits.

§ 411.113 Audit contents and findings.

(a) Each audit must include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the care provider facility under review.

(b) Audit reports must state whether care provider facility policies and procedures comply with all standards.

(c) For each of these standards, the auditor must determine whether the audited care provider facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary must indicate, among other things, the number of provisions the care provider facility achieved at each grade level.

(d) Audit reports must describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited care provider facility and must include recommendations for any required correction action.

(e) Auditors must redact any personally identifiable information of UCs or staff information from their reports but must provide such information to ORR upon request.

(f) ORR must ensure that aggregated data on final audit reports is published on ORR's Web site, or is otherwise made readily available to the public. ORR must redact any sensitive or confidential information prior to providing such reports publicly.

§ 411.114 Audit corrective action plan.

(a) A finding of ''Does Not Meet Standard'' with one or more standards must trigger a 90-day corrective action period.

(b) The auditor and ORR must jointly develop a corrective action plan to achieve compliance.

(c) The auditor must take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a care provider facility.

(d) After the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action.

(e) If the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it achieved compliance.

§411.115 Audit appeals.

(a) A care provider facility may file an appeal with ORR regarding any specific audit finding that it believes to be incorrect. Such appeal must be filed within 90 days of the auditor's final determination.

(b) If ORR determines that the care provider facility stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility must bear the costs of the re-audit.

(c) The findings of the re-audit are considered final.

PARTS 412–499 [RESERVED]